

Draft Amendment Clarkston Chapter 11- Occupational Tax –12/2/16

Chapter 11 - OCCUPATIONAL LICENSES AND TAXES

Sec. 11-1. - Registration of the name of a business.

No person, firm, partnership or corporation shall be engaged in, prosecute or carry on any business, trade or profession, either in whole or in part within the corporate limits of the city by maintaining an office or other place of business within the limits of said city, or by soliciting orders through said office or business, or engage in any business in any manner through said office without having registered said business with the city clerk, having paid the occupational tax as provided in article II of this chapter, if applicable, and complied with all other provisions of this Code which regulate businesses within the city, and have obtained an occupational tax/business license from the clerk.

Sec. 11-2. - Responsible persons construed.

Whenever in this chapter the term "owner" or "person" is used, the principal, but in his, her or their absence any agent, clerk, or employee, shall be subject to the penalties herein imposed should the said business be carried on without registering the business as required herein in the same manner as if he or she was, or they were the proprietor or proprietors of said business.

Sec. 11-3. - Administration of this article.

The city manager, or designee shall administer and enforce, the provisions of this article requiring registration and licensing of all persons doing business in the city. The city planner or the planning and zoning board shall make recommendation to the city clerk where required by this article.

Sec. 11-4. - Application procedure.

- (a) New business. Prior to commencing a new business in the city, the owner shall file on forms provided by the city clerk an application to do business in the city. The application shall be signed by the owner, a partner, or corporate officer and attested before a notary public. Application shall be made on forms provided by the city clerk and shall provide at least the following information:
 - (1) The name, address within the city, and local telephone number of the entity which owns the business;
 - (2) An exact description of the nature of the business including a description of the items to be sold, the service to be rendered, and the business activities expected to be conducted on the premises;
 - (3) The federal tax identification number and any Georgia sales tax identification number held by the business;
 - (4) The expected date of opening and the expected hours of operation for the business;
 - (5) If the owner is an individual, the name, home address, home telephone number, date of birth and Social Security number of the owner;
 - (6) The name, home address, home telephone number, date of birth and Social Security number of the manager of the business;
 - (7) The name and address of the places of business or employment of the owner (if an individual) and the manager of the business for the previous five (5) years;
 - (8) The name, address and phone number of a person or persons to be notified in case of an emergency.
- (b) Renewal. Business licenses granted in this article shall expire December 31 of each year, but a grace period shall be provided between January 1 and March 1 of the following year during which a business license may be renewed. Renewal is not a matter of right and no person or entity shall have a vested right to a license or the renewal thereof. Renewal shall be made by application to the city on forms provided by the city clerk and shall require submission of the same information as required for an initial license as described in subsection (a) of

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this section. If a licensee fails to apply for renewal of a business license by March 1st, such licensee shall automatically be deemed suspended and the licensee shall not be allowed to conduct business in the City until and unless such licensee is approved for renewal and all fees and penalties paid.

- (c) Grant of license. The city manager, or designee shall act upon the new business application or renewal application within thirty (30) days of receipt of a fully completed application, payment by the applicant of the occupational tax as provided in article II of this chapter and tender of the necessary fees by the applicant. An application for a new license or a renewal license shall be granted unless the City determined that grounds for denial exist for one or more of the reasons set forth in section 11-5 of this article.
- (e) Review of applications for zoning compliance. The City of Clarkston's designated city planner or, if no such designee exists, the planning and zoning board shall review all new applications for business licenses and shall provide an opinion to the city clerk stating whether or not the city planner or planning and zoning board believes the proposed use to be consistent with the zoning designation for the subject property. This review may include the identification of site requirements for specific uses as defined by the zoning district and/or adopted city design standards.

Sec. 11-5. - Grounds for rejection of an application, for suspension or revocation of an existing license, or for nonrenewal of an application for a business license.

A business license may be denied, suspended or revoked upon one or more of the following grounds: (1)
The application is incomplete;

- (2) The original application, or renewal thereof, contains false or misleading information or the applicant has deliberately sought to falsify information contained therein;
- (3) The applicant has failed to pay the occupational tax, administrative fee or regulatory fee required by article II of this chapter;
- (4) The applicant or its employees have engaged in illegal activity either on the premises of the business or in the transaction of the applicant's business;
- (5) The business has been operated in a manner that constitutes a nuisance to public health, safety or welfare;
- (6) The business is subject to regulation under some other section of this Code and has failed to conduct itself in accordance with those regulations;
- (7) The business or establishment is not authorized to operate within the city, or within the zoning district within which it is located, or is otherwise not in conformity with locational requirements of any of the city's ordinances;
- (8) The applicant or certificate holder is guilty of fraud in the operation of the business or occupation he practices or fraud or deceit in being licensed to practice in that area;
- (9) The applicant or certificate holder has been convicted of or has pled guilty or nolo contendere to any felony, a sexual offense as set out in O.C.G.A. § 16-6-1 et seq., or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, for a period of five years immediately prior to the filing of the application. If, after having been granted a certificate, the applicant pleads guilty, is convicted of, or enters a plea of nolo contendere to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
- (10) The business or establishment has been found by a court of law to have been operating unlawfully;
- (11) The applicant has allowed the violation of an ordinance of the city or a violation or any criminal law of the State of Georgia or the United States to occur on the premises within the city.

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Sec. 11-6. – Suspension and revocation of a business license.

- (a) Should the city manager or designee find cause for one or more reasons set forth in section 11-5 for a business license to be suspended or revoked, the city manager or designee shall notify the licensee by written notice of intent to suspend or revoke said license. The notice shall be sent by certified mail, return receipt requested. Such notice shall state the grounds for the suspension or revocation of said occupational tax certificate and notify the holder of the right to appeal said decision as designated in this article.

Sec. 11-7. - Appeal procedure.

- (a) Should an aggrieved person or entity desire to appeal a decision by the city manager or designee under this article, the following procedure shall apply: a written notice of appeal must be filed with the city clerk within 15 calendar days after receipt of the decision. The notice of appeal shall be in the form of a letter and shall clearly identify all of the objections or exceptions taken to the decision of the city. The notice of appeal shall also contain an address for receipt of future notices. Should the aggrieved person or entity fail to file a notice of appeal within the time allowed, the right to appeal pursuant to this section is lost.
- (b) Upon receipt of a timely and proper notice of appeal, the city manager or designee shall notify the appellant, in writing, of the date, time and place where a hearing will be held. The notice shall specify the time, place and date, not less than ten (10) days nor more than forty-five (45) days after the date the notice is issued, on which the mayor and city council, or such hearing officer or board as the mayor and council may designate, shall conduct a hearing on the aggrieved party's appeal. The appealing party may be represented by legal counsel. The mayor and city council or designated hearing officer, shall receive all relevant duly sworn testimony and evidence from the appellant, any witness he may wish to call, from interested parties and from the city staff. The city council or designated hearing officer may sustain, overrule or modify the action complained of based upon the evidence submitted at the hearing. The action of the city council or designated hearing officer shall be final. The city council or designated hearing officer shall not be bound by the traditional rules of evidence in hearings conducted under this chapter. Rules of evidence as applied in an administrative hearing shall apply.
- (c) The mayor and city council, or such hearing officer as the mayor and council may designate, shall issue a written decision, including specific reasons for the decision pursuant to this article, to the appellant and the city manager within five days after the hearing. If the decision is to deny the appeal, the decision appealed from shall become final.

Sec. 11-8. - Penalty for violation.

Any person who operates a business within the city without a valid occupational tax/business license, after revocation of a license or during the suspension of a license shall be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000.00) per violation or by imprisonment for a period not to exceed six (6) months or by both such fine and imprisonment. Each day of operation of a business without a valid license shall be considered a separate offense.

Sec. 11-9. - Unlawful operation declared a nuisance.

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Any business operated, conducted or maintained without having a valid occupational tax/business license issued pursuant to this chapter in effect is declared to be unlawful and a public nuisance. The city may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinderment thereof, in the manner provided by law.

Sec. 11-10. - Background examination and good character of sellers and traders of used goods.

- (a) All persons desiring to sell or trade used goods including, but not limited to, used furniture, car title loan companies not meeting the definition of a “pawn broker” under article VII of this chapter, used appliance companies, used jewelry companies, flea markets and second hand stores shall make application to the city clerk for a license authorizing the same on the form described in section 11-4 of this article. Thereafter, if any person other than a person or person listed in the application as manager shall be employed as a manager, the name, home address, home telephone number, Social Security number, date of birth and places of employment for the previous five (5) years of the new manager or managers shall be filed with the city clerk for investigation as hereinafter provided within three (3) days of the date of such employment.
- (b) If the entity applying for said license is a partnership, corporation, or other form of limited liability company, the application shall contain the name, home address, home telephone number, Social Security number, and date of birth of each partner, officer, director or member of the entity seeking such license. Applications must be sworn to by the applicant or any agent thereof. All applicants shall furnish data, information and records as required by the city clerk to insure compliance with this section. Failure to furnish such information and records within fifteen (15) days from the date of such application for a license to the city clerk shall automatically serve to dismiss the application for a business license.
- (c) The city clerk, in conjunction with the chief of police, shall investigate all applicants to insure that such person, individuals, partners in a partnership, officers and directors of any corporation, members of any other form of business entity, and the manager or managers thereof shall be of good moral character, and in no event shall any license be granted to any business in which an owner, partner, officer, director, member or manager has been convicted or has pled guilty or entered a plea of nolo contendere to any crime involving moral turpitude, theft by taking, or theft by receiving, within a period of five (5) years immediately prior to the filing of such application.
- (d) The applicant shall file and provide to the chief of police fingerprints and other information deemed necessary by the chief of police in order to conduct a thorough, complete and exhaustive search relative to any police record of the persons covered by this article. The chief of police shall report to the city clerk with regard to his findings relative to such background examination.
- (e) The city clerk shall determine whether the applicant meets the good character requirements of this Section, when applicable, before issuance of a business license.
- (f) The city council shall hear appeals of decisions pursuant to this section under the same procedure as set forth in section 11-7 of this article.

Sec. 11-11. - Public display of merchandise is prohibited.

It shall be unlawful for any person holding a license issued pursuant to this chapter, or for any other person, to display outside the walls of any business location merchandise or samples of merchandise which are offered for sale at that or another business location. Notwithstanding the foregoing, objects such as automobiles which are too large to be displayed indoors and plants or other living materials which require sunlight may be displayed outdoors.

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Sec. 11-12. - Regulation and licensing of vendors.

- (a) Vendors are hereby defined as a provider of goods or services operating within the City of Clarkston whose principal place of business is outside of the city and who by the nature of their goods and service is mobile or transient in nature. Examples include, but are not limited to, mobile catering services, mobile auto detailing services and door-to-door sales.
- (b) All vendors offering goods or services within the city limits of the City of Clarkston shall have on their person at all times a valid business license issued from the jurisdiction where their principal place of business is located and a City of Clarkston Vendor License.
- (c) Application shall be made for a City of Clarkston Vendor License on forms provided by the city clerk. The fee for such license shall be One Hundred Dollars (\$100.00). Vendor licenses shall be valid for a period of one (1) year from the date of issue.
- (d) Person who fail to comply with the requirements of this Section, upon a finding of guilt, shall be subject to the penalties set forth in section 1-7 of the Code of Ordinances. Failure to comply on each day shall be a separate offense.

Sec. 11-13. - Hours of operation.

It shall be unlawful for any business within the City of Clarkston to be open to the public or to transact any business between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday. It shall be unlawful for any business within the City of Clarkston to be open to the public or to transact any business between the hours of 2:55 a.m. and 6:00 a.m., Saturday and Sunday mornings. Certain businesses may be further restricted in their hours of operation by separate city ordinance. Any owner or other responsible person operating a business in violation of this section shall be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000.00) per violation or by imprisonment for a period not to exceed six (6) months or by both such fine and imprisonment. Each violation of this section shall constitute a separate offense. Any business operating in violation of this section shall be subject to license suspension revocation pursuant to section 11-6 of this Code of Ordinances.

Sec. 11-14. - Dominant line of business to be identified on business registration.

The business license or registration of each business operated in the city shall identify the dominant line of business that the business conducts.

Sec. 11-15. - Evidence of state registration required if applicable; state registration to be displayed.

- (a) Each person who is licensed by the Secretary of State pursuant to Title 43 of the Official Code of Georgia Annotated shall provide evidence of proper and current state licensure before the city business license or registration may be issued.
- (b) Each person who is licensed by the state shall post the state license next to the city business license in a conspicuous place in the licensee's place of business and shall keep both the state license and the city license there at all times while valid.

Sec. 11-16. - Evidence of qualification required if applicable.

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Any business required by state law, county ordinance, or city ordinance to obtain any health permit, bond, certificate of qualification, certificate of competency, or any other regulatory authorization shall first, before the issuance of city business license or registration, show evidence that such requirements have been met.

Sec. 11-17. - Display of license or registration required.

A city-issued business license and any applicable registration shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in Clarkston, Georgia. If the taxpayer has no permanent business location in Clarkston, Georgia, but a business tax registration is required pursuant to Article II of this chapter, said registration shall be shown to the city clerk or this officer's deputies or to any police officer of the city upon request.

Secs. 11-18—11-32. - Reserved.

ARTICLE II. - OCCUPATION TAX

FOOTNOTE(S):

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Editor's note—Ord. No. 352, § 3, adopted Dec. 8, 2010, repealed former Art. II, §§ 11-33—11-64, in its entirety and enacted new provisions as herein set out. Former Art. II pertained to similar subject matter and derived from Ord. No. 192, § 2, 11-1-94; Ord. No. 220, §§ 1—3, 6-2-98; Ord. No. 254, §§ 1—3, 12-4-01.

Sec. 11-33. - Occupation tax required for business dealing in the City of Clarkston.

Each person engaged in any business, trade, profession, or occupation in Clarkston, Georgia, and having a location in the city or, in the case of an out-of-state business with no location in Georgia, exerting substantial efforts within the state pursuant to O.C.G.A. § 48-13-7, shall pay an occupation tax for said business, trade, profession, or occupation in an amount to be determined as set forth in section 11-36 of this article.

Sec. 11-34. - Construction of terms; definitions.

As used in this article, the following terms shall have the indicated definitions:

Administrative fee means a component of an occupation tax which approximates the reasonable cost of handling and processing the occupation tax.

Business means any person, sole proprietor, partnership, corporation, trade, profession, occupation or other entity and the efforts or activities associated thereby for the purposes of raising revenue or producing income.

Dominant line means the type of business, within a multiple-line business, from which the greatest amount of income is derived.

Gross receipts means the total revenue of the business or practitioner for the period, including without limitation, the following:

- (1) Total income without deduction for the cost of goods or expenses incurred;

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- (2) Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
- (3) Proceeds from commissions on the sale of property, goods, or services;
- (4) Proceeds from fees for services rendered; and
- (5) Proceeds from rent, interest, royalty or dividend income.

Gross receipts shall not include the following:

- (1) Sales, use, or excise tax;
- (2) Sales returns, allowances, and discounts;
- (3) Interorganizational sales or transfers between or among the units of a parent-subsiary controlled group of corporations as defined by 26 U.S.C. section 1563(a) (1), or between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. section 1563(a) (2);
- (4) Payments made to a subcontractor or an independent agent; and
- (5) Governmental and foundation grants, charitable contributions, or the interest income derived from such funds received by a nonprofit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute eighty (80) percent or more of the organization's receipts.
- (6) Proceeds from sales of goods or services which are delivered to or received by customers who are outside the state at the time of delivery or receipt.

Location of office means and includes any structure or vehicle where a business, profession, or occupation is conducted, shall not include a temporary work site which serves a single customer or project.

License means a permit or certificate issued by the city that allows an entity to operate lawfully in the city. A license does not create any rights to operate in violation of any provision of this Code and it may be denied, suspended or revoked by the city at any time pursuant to the procedures set forth herein. This definition applies to any license issued pursuant to this chapter.

Occupation tax means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business for revenue raising purposes.

Person includes sole proprietors, corporations, partnerships, nonprofit, or any other form of business organization, but specifically excludes charitable nonprofit organizations which utilize fifty (50) percent of their proceeds for charitable purposes.

Practitioner of profession or occupation is one who by state law requires state licensure regulating such profession or occupation. Such shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

Regulatory fees means payments, whether designated as license fees, permit fees, or by another name, which are required by a local government as an exercise of its police power and as a part of or an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the city. A regulatory fee may not include an administrative fee. Development impact fees as defined by of O.C.G.A. § 36-71-2(8) or other costs or conditions of zoning or land development are not regulatory fees.

Sec. 11-35. - Administrative and regulatory fees.

- (a) A non-prorated, nonrefundable annual administrative fee of one hundred dollars (\$100.00) shall be required on all business and occupational tax accounts for the initial start-up, renewal, or reopening of those accounts.

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- (b) A non-prorated, nonrefundable, annual regulatory fee will be imposed on certain businesses as provided for by O.C.G.A. § 48-13-9. The regulatory fee schedule for persons practicing the following listed occupations is as follows:

Occupation	Regulatory Fee
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Carnivals	\$300.00
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Taxicab/limousine operators	100.00
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Pawnbrokers	3,500.00
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Dealers in precious metals	75.00
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Fortunetellers	75.00
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Used furniture dealers	75.00
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Car title loan companies	75.00
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Used appliance companies	75.00
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Secondhand stores	75.00
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Flea market operators	75.00
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Sec. 11-36. - Business classifications for determining tax levy.

(a) For the purpose of this article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business as defined by the Standard Industrial Classification (SIC) and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, or Internal Revenue Service. The finance department shall review assignment of businesses to profitability classes on a biannual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.

(b) Classifications by business profitability to be established pursuant to subsection (a) of this section are incorporated herein by reference and adopted for use in the application of this article. All separate businesses engaged in more than one business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant business activity is legally exempt as defined by this article shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.

(c) The occupation tax shall be determined by applying the business' gross receipts returned to the city to the business' profitability classification established for each business type. No tax will be assessed for the first \$20,000.00 of gross revenue. Gross revenues above \$20,000.00 are taxed using the fee class table based on profitability set forth in subsection (d) of this section.

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(d) Occupation tax schedule. The tax rate determined by profitability ratios in combination with gross receipts for each business, trade, profession, or occupation shall be as follows and will be developed and updated from time to time by the City Manager.

Profitability Ratio/ Tax Class	Tax Rate on Gross Receipts
Class 1	.0001800
Class 2	.0003000
Class 3	.0004200
Class 4	.0005400
Class 5	.0006600
Class 6	.0007800

(e) A copy of business classifications shall be maintained in the office of the city clerk and shall be available for inspection by all interested persons.

Sec. 11-37. - Levy of occupation tax on business with no location in Georgia.

An occupation tax is hereby imposed, in an amount to be determined by section 11-36 of this article, on those businesses and practitioners of professions with no location or office in the state if the business's largest dollar volume of business in Georgia is in Clarkston and the business or practitioner:

- (1) Has one (1) or more employees or agents who exert substantial efforts within the jurisdiction of Clarkston for the purpose of soliciting business or serving customer or clients; or
- (2) Owns personal or real property which generates income and which is located within the jurisdiction of Clarkston.

Sec. 11-38. - Reserved.

Sec. 11-39. - The number of businesses considered to be operating in the city.

Where a person conducts business at more than one fixed location, each location or place shall be considered a separate business for the purpose of occupation tax.

Sec. 11-40. - Professionals as classified in O.C.G.A. section 48-13-9(c).

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- (a) Practitioners of professions as described in O.C.G.A. § 48-13-9(c)(1)—(18) shall pay occupation tax pursuant to this section notwithstanding any other provision of this article.
- (b) Professionals subject to this section shall pay an occupation tax of four hundred dollars (\$400.00) per practitioner who is licensed to provide the service, such tax to be paid at the practitioner's office or location. The per-practitioner fee applies to each person in the business who qualifies as a practitioner under the state's regulatory guidelines and framework.
- (c) Notwithstanding any other provisions in this chapter, the payment of the occupational tax and the posting of the certificate as described herein shall not be a precondition to the practice of any of the professions described in O.C.G.A. § 48-13-9(c)(1)—(18). Those professionals who fail to pay the occupational tax or to post the certificate as required herein shall be subject to the penalties set forth in this article.

Sec. 11-41. - Practitioners exclusively practicing for a government.

Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, instrumentalities of the United States, the state or a municipality or county of the state shall not be required to obtain a license or pay an occupation tax for that practice.

Sec. 11-42. - Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of law within the city.

Sec. 11-43. - When tax due and payable.

Each business within the city shall pay occupation tax on an annual basis for each calendar year. Said occupation tax shall be due and payable January 1 of each year and shall, if not paid by January 15 of each year, be subject to penalties for delinquency as prescribed in this article.

Sec. 11-44. - Exemption on grounds that business is operated for charitable purpose.

No business shall be exempt from occupation tax on the ground that such business is operated for a charitable purpose, unless said business provides proof to the city clerk that fifty (50) percent or more of the entire proceeds from said business are devoted to such charitable purpose, as defined by the Internal Revenue Service.

Secs. 11-45, 11-46. - Reserved.

Sec. 11-47. - Liability of officers and agents; registration required; failure to obtain.

Should any business required to register and pay occupation tax pursuant to this chapter fail to do so, each officer or agent soliciting for or representing such business shall individually be subject to the various penalties provided for in this chapter for businesses that fail to obtain a registration or pay occupation tax.

Sec. 11-48. - Civil penalty for transacting business when tax delinquent.

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(a) Any existing or new business that transacts business within the city without first paying the required occupation tax for the applicable calendar year shall be subject to a civil penalty in the form of a percentage of the tax owed, to be determined by the length of the delinquency as indicated in subsection (b).

(b) [Amount of penalty.]

Delinquency of 1—30 days:	5%
Delinquency of 31—90 days:	10%
Delinquency of 91—270 days:	15%
Delinquency of 271—365 days:	20%
Delinquency of more than one year:	30%

(c) The city clerk shall not issue a business license to any person that is delinquent in paying occupation tax until such person has paid both the principal tax amount and the penalty amount provided for in this section.

Sec. 11-49. - Criminal penalty for article violation.

Any person violating any provisions of this article shall, upon conviction before the city judge, be fined in an amount not exceeding five hundred dollars (\$500.00). Each day in which a violation occurs shall be treated as a separate violation.

Sec. 11-51. - Businesses not covered by this article.

The following businesses are not covered by the provisions of this article but may be assessed an occupation tax or other type of tax pursuant to the provisions of other general laws of the state or by local law:

- (1) Those business regulated by the Georgia Public Service Commission.
- (2) Those electrical service businesses organized under O.C.G.A. § 46-3-1 et seq.
- (3) Any farm operation for the production from or on the land of agricultural products, but not including agribusiness.
- (4) Cooperative marketing associations governed by O.C.G.A. § 2-10-105.
- (5) Insurance companies governed by O.C.G.A. § 33-8-8, et seq.
- (6) Motor common carriers governed by O.C.G.A. § 46-7-15.
- (7) Those businesses governed by O.C.G.A. § 48-5-355.
- (8) Agricultural products and livestock raised in the State of Georgia governed by O.C.G.A. § 48-5-356.

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- (9) Depository financial institutions governed by O.C.G.A. § 48-6-93.
- (10) Facilities operated by a charitable trust governed by O.C.G.A. § 48-13-55.

Sec. 11-52. - Occupation tax inapplicable where prohibited by law or provided for pursuant to other existing law.

An occupation tax shall not apply to the gross receipts of any part of a business where such levy is prohibited or exempted by the laws of Georgia or the United States.

Sec. 11-53. - Occupation taxes levied on business to be transacted during current calendar year; filing of returns estimating gross receipts for the current calendar year.

All occupation taxes levied under this article are levied on the amount of business transacted during the current calendar year. Each business subject to this tax shall, between January 1 and January 15 of each calendar year, file with the city clerk a good faith estimate of the business' gross receipts for the current calendar year on a form provided by the city clerk. Said return shall be signed under oath by an officer, partner, or owner of the business. Said estimated amounts shall in no event be less than the amount of gross receipts on an annual basis returned on the business' most recent actual return as provided for in section 11-54. This estimated return shall be used as the basis for making estimated payments of the occupation tax for the current calendar year. The actual and final amount of tax levied for business transacted in the current calendar year shall be determined in accordance with a final return made after year end as provided hereafter.

Sec. 11-54. - Filing of return showing actual gross receipts during a calendar year; procedure where taxes overpaid or underpaid.

- (a) At the same time that a business files an estimate of gross receipts for the current year as required by section 11-53, each business shall also file with the city clerk, on a form furnished by the city clerk, a return setting forth the actual amount of the gross receipts of such business during the year preceding the immediately preceding calendar year. Said return shall be signed under oath by an officer, partner, or owner of the business.
- (b) Where a business subject to the occupation tax for the current calendar year was conducted for only part of the year preceding the immediately preceding year the amount of gross receipts for such part of said year shall be reported in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year.
- (c) If the amount of the occupation tax owing for the year, preceding the immediately preceding year based on the return provided for in this section and on the rate of said tax provided by this article exceeds the amount of occupation tax theretofore paid by said business based on the estimate established pursuant to section 11-53 hereof, the difference in amount shall be due and payable by the taxpayer to Clarkston on or before January 15 of the current year and delinquent if not paid on or before January 15.
- (d) If the amount of the occupation tax paid for the year preceding the immediately preceding year based on the estimated return provided for in section 11-53 and on the rate of said tax provided by this article exceeds the amount of occupation tax actually owed by said business based on the actual return for said year pursuant to subsection (a) or (b) of this section, then the difference in said amounts shall be refundable by the city to the taxpayer; or, if such business is continuing within the city, the city shall treat such amount as a credit toward the estimated taxes due for the current year.

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Sec. 11-55. - Reserved.

Sec. 11-57. - More than one place or line of business.

Where a business is operated at more than one (1) place or where the business includes more than one (1) line, said business will pay an occupation tax in accord with the prevailing taxing method and tax rate for the dominate line at each location.

Sec. 11-58. - Returns confidential.

Except in the case of judicial proceedings or other proceedings necessary to collect the occupation tax hereby levied, it shall be unlawful for any city employee or officer, or any other person to divulge or make known in any manner the amount of gross receipts or any particulars set forth or disclosed in any occupation tax return required under this article. The information received in such returns and the returns themselves are not subject to public scrutiny under O.C.G.A. § 50-18-70, et seq. See O.C.G.A. § 48-13-15.

Sec. 11-59. - Inspections of books and records.

The finance department, through its officers, agents, employees or representatives, shall have the right to inspect the books and records, including sales and income tax returns filed with the state and federal governments, for the business or person for which the returns are made. The finance department shall have the right to inspect the books or records for the business for which the return was made in Clarkston, and upon demand of the finance department such books or records shall be submitted for inspection by a representative of the city within thirty (30) days. Failure of submission of such books or records within thirty (30) days shall be grounds for revocation of the business' license to do business in Clarkston. If, after examination of the books, tax returns, or records, it is determined that a deficiency occurs as a result of underreporting, additional payment of occupation taxes required to be paid under this article shall be assessed the interest as provided by state law and penalties provided for by this Code..

Sec. 11-60. - Tax registration to be revoked for failure to pay tax, file returns, or permit inspection of books.

Upon failure of any business to pay said occupation tax or any part thereof before it becomes delinquent, upon failure to make any of said returns by their due date, upon failure to make a true return, upon failure to amend a return to set forth the truth, or upon failure to permit inspection of its books, tax returns or records as required above, any business license granted by the city under this article shall be, ipso facto, revoked. No new business license shall be issued by the city until the event which caused revocation has been cured or satisfied. Revocation of a business license shall have no effect upon the city's right to collect any delinquency or to enforce the other civil or criminal penalties provided in this article.

Sec. 11-61. - Lien taken for delinquent occupation tax.

- (a) In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the finance department, upon any tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of said tax against the persons, partnership, or corporation liable for said tax. The lien shall cover the property in the city of the person, partnership, or corporation liable for said tax, all as provided by

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the ordinances and Charter of the city and the laws of Georgia. Said lien shall bear interest in the same manner as other tax liens of the city, and shall be subject to levy and sale as provided in the ordinances of said city.

- (b) In addition to the other remedies provided for in this chapter, the sheriff or marshal may proceed to collect unpaid occupation tax in the same manner as provided for at law for tax executions.

Sec. 11-63. - Requirement of public hearing before tax increase.

After January 1, 1996, the city council shall conduct at least one public hearing before adopting any ordinance or resolution which will increase the rate of occupation tax as set forth in this article.

Sec. 11-64. - Option to establish exemption or reduction in occupation tax.

The city council may by subsequent ordinance or resolution provide for an exemption or reduction in occupation tax to one (1) or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting or encouraging selected types of businesses or practitioners. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious, and the reasons for such grant shall be set forth in the minutes of the city council.